

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 140 2003(M/S)

Bharat Singh and 3 others

Versus.

Shiv Kumar and 3 others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 21.8.2004.

Initial of Judge

In the High Court of Uttaranchal, at Nainital.

W.P. No. 140/2003(M/S)

Bharat Singh and 3 others Petitioners.

Vs.

Shiv Kumar and 3 others Respondents.

Date: 21.8.2004

Sri B.P. Nautiyal, learned counsel for the petitioners.

Sri Rajendra Dobhal, learned counsel for the respondents.

Hon. Rajesh Tandon J.

By the impugned order the revision has been rejected on 22.1.2003 by the Additional District Judge, Dehradun, confirming the order dated 11.12.1998, passed by Civil Judge (J.D.), Dehradun in proceedings under Order 9 Rule 13 C.P.C.

Briefly stated the facts of the case are that S.C.C. suit No. 4/1987 was filed by the mother of the respondents against the father of the petitioners for rent and ejectment on the ground that the predecessor of the petitioners was tenant at the rate of Rs. 45/- per month and the tenancy having been terminated vide notice dated 8.11.86 which was served on 15.11.86 and the tenant was defaulter and the rent was due from 1.2.1986 to 15.12.1986. The written statement was also filed in the aforesaid S.C.C. suit. On 14.4.1987 the order to proceed ex parte was passed and in pursuance of the said order the suit was decreed ex parte by the trial court on 15.6.1987. Accordingly to the submission of the learned counsel for the petitioners Sri B.P. Nautiyal that the ex parte order came to his knowledge on 23.4.1988 through the Rent Control Inspector and immediately thereafter he filed an application along with affidavit for setting aside the ex parte decree passed against the father of the petitioner on 19-7-1988. The father of the petitioner filed an application for restoration. The Judge Small Cause

Court vide his order dated 11.12.1988 has rejected the application on technical grounds. The petitioners have preferred a revision. The revisional Court had also confirmed the order taking the service on any member of the family as final when in point of fact the petitioners have repeatedly stated that the summons were not served upon them. A perusal of the order sheet shows that on 9-4-1987, an application has been filed that the order may be recalled. The orders are quoted below:-

“9-4-87: called. Plaintiffs learned counsel is present. Seen the report of process server. Service is not sufficient. Fresh steps by both ways be taken within 7 days. Fix 11.6.87 for hearing.”

“14-4-87: 11-C प्रार्थना पत्र मय शपथ पत्र पैरवी के आदेश निरस्त करने वास्ते पेश होकर आदेश हुआ कि शपथ पत्र देखा तामील पर्याप्त मानही जाती है। नियत दिनांक पर एकपक्षीय साक्ष्य देतु पेश हो।”

In view of the facts and circumstances once the order was passed for service on the petitioners-defendants it was incumbent upon the Presiding Officer to have taken steps to serve the petitioners-defendants. A perusal of the record shows that since the service had been treated to be made upon the family member of the petitioner i.e. the defendant in the case, the same was treated as sufficient.

The entire journey had taken place from the year 1987 up to 2004 in the name of the restoration, otherwise the matter would have been finished then and there, after taking fresh steps for service which was directed on 9-4-1987.

The need of the society is that there should be justice oriented approach and the restoration should not be rejected only on the ground to technicalities. The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood as under:

“Law Courts will lose their efficacy if they can not possibly respond to the need of the society technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.”

It is really surprising that the matter is pending on the restoration application since 1987 and almost 17 years have already passed.

The Judge Small Cause Court shall hear the matter after giving opportunity to the petitioners-defendants to file written statement.

Both the parties shall appear before the Judge Small Cause Court, Dehradun on 16-9-2004. The petitioners-defendants shall file the written statement within a period of 30 days as contained under Order 8 Rule (1) C.P.C. The Judge Small Cause Court after framing points for determination shall decide the case finally after filing the W.S. within three months.

The writ petition is allowed. A writ of certiorari is issued, setting aside the impugned orders dated 11.12.98 and 22.1.2003. No order as to costs.

(Rajesh Tandon J.)

ISB